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## VIA ELECTRONIC MAIL ONLY

April 8, 2021

Brad Clark, General Counsel  
Oklahoma Department of Education

Dear Mr. Clark:

I am in receipt of your letter of Tuesday, April 6, 2021, received after the close of business at 8:38 pm, and wanted to respond in kind. First off, I appreciate you sending the legal authority for the State Board to supervise the public school system in Oklahoma; we do not dispute that. However, there is a big difference between supervision of the school system and having the authority to compel citizens to appear before a state agency. While you might have subpoena power in an individual proceeding under the Administrative Procedures Act, we are not in such a proceeding now. Similarly, the authority to require *all of the school districts* to keep certain records and file certain reports is simply not the equivalent of ordering *certain* employees of *certain* school districts to appear and submit to examination by the State Board's members and attorneys. None of the powers you listed include that power; had the Legislature intended to grant such powers it would have been easy to do so. Further, please identify any reports that you allege have not been filed by the District.

I disagree with your attempted justification to keep secret not only the identity of the complainants, as well as the substance of their complaints, as well as the OSDE's responses to those complaints. Even if you chose to redact the identities of the complainants, there is no authority to keep the content of the accusations secret, and certainly not the OSDE's responses to the complainants, with the identities redacted. See *State ex rel. State Board of Medical Licensure and Supervision v. Migliaccio*, 1996 OK CIV APP 37, 917 P.2d 483 ("[R]ecords created by a public body after receipt of a complaint must be open to public access and review"). If the purpose of this inquiry is to conduct a fair investigation, I cannot imagine why you would not willingly provide the substance of the allegations in the complaints, as well as any responses, to Western Heights. This shouldn't be a game of "hide the ball".

Do you also argue that the dates of these complaints are confidential? I notice that out of the eight stated areas where the Board made their "determination that the District has failed to comply with Oklahoma laws and regulations", the first dates back to March,

2020, the second was in the "Spring of 2020", the third was from a 2019 audit released on June 30, 2019, and the fourth was in June, 2020. When did the OSDE first receive notice of these allegations? You state in your letter that Oklahoma law requires the OSDE to investigate a complaint "within thirty (30) days of receiving the complaint". What exactly has been done in this "investigation"? Certainly, it did not include any attempt to find out what Western Heights' response to the allegations was, as the first time the District became aware of the allegations was **after the State Board met in secret** on March 25<sup>th</sup>, then voted (quoting from your letter) "that the District has failed to comply with Oklahoma laws and regulations". It is antithetical to our system of justice for a state agency to meet in secret, determine guilt, all of which occurs before the agency has either notified the subject of the investigation, informed them of the allegations, or given them any opportunity to respond.

You go on to state in your letter that the "OSDE has attempted to meet with District representatives, including the Superintendent". What you fail to mention is the very first attempt to meet with the District wasn't until the afternoon of Tuesday, April 6<sup>th</sup>, almost two weeks after the State Board had already decided the District's guilt, and three days before the April 9<sup>th</sup> State Board's meeting. The Superintendent referred the request to me, and because I had previous court engagements (I returned the call on the way to a court hearing) and depositions on Wednesday and Thursday, I could not meet until Friday. Mr. Piper indicated that he had to meet before the State Board meeting on Friday and would not even set a meeting for Friday afternoon. This type of gamesmanship does nothing to increase the District's confidence that it will receive a fair hearing before the State Board who, according to your letter, has already decided the case. But, just so we are clear, the District stands ready to respond to these allegations, provided it is sufficiently provided notice of same (see my last letter), it is in the appropriate forum, and the appropriate statutory and due process protections are provided.

I truly hope the State Board will take a step back from the precipice of another court action with the District. That should include full, fair, and detailed notification of your concerns to the District, followed by an opportunity for the District to respond and defend those allegations, all of which occurs **before** a determination is made as to whether the allegations have merit. There is good reason, and hundreds of years of experience, that support hearing both sides of an issue before deciding it. If you have any questions or comments, feel free to call.

Sincerely,



Jerry Colclazier

cc: Mannix Barnes  
Members of the Board of Education  
Members of the State Board